

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID J. KRAL,

No. 07-14932

Plaintiff,

District Judge Denise Page Hood

v.

Magistrate Judge R. Steven Whalen

JAMES TABELING, ET.AL.,

Defendants.

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**ORDER DENYING MOTIONS TO AMEND**

Plaintiff has filed two motions to amend his complaint [Docket #13 and #14]. In each motion, he seeks to add Defendants.

Fed.R.Civ.P. 15(a) states that after a responsive pleading is filed, a complaint may be amended only by leave of the court, and that “leave shall be freely given when justice so requires.” However, despite the general rule of liberality with which leave to file amended complaints is to be granted, the Sixth Circuit has held that when a proposed amended complaint would not survive a motion to dismiss, the court may properly deny the amendment. *Neighborhood Development Corp. v. Advisory Council on Historic Preservation*, 632 F.2d 21, 23 (6<sup>th</sup> Cir. 1980); *Thiokol Corporation v. Department of Treasury*, 987 F.2d 376 (6<sup>th</sup> Cir. 1993).

I have filed a separate Report and Recommendation, recommending that the complaint be dismissed with prejudice under the doctrine of issue preclusion, because the same issues raised in the complaint were raised and decided adversely to Plaintiff in his previous habeas corpus proceeding. Therefore, allowing Plaintiff to amend his complaint to merely add defendants would be futile.

Accordingly, Plaintiff's motions to amend [Docket #13 and #14] are DENIED.  
SO ORDERED.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: December 18, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 18, 2008.

S/G. Wilson  
Judicial Assistant